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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

CHRIS VITALE,

Plaintiff and Appellant,

v.

SAFEWAY, INC.,

Defendant and Respondent.

H037407

(Santa Clara County

Super. Ct. No. CV165038)

Mr. Chris Vitale filed a complaint in superior court alleging that Safeway, Inc. (Safeway) took money from his bank account. Appellant states in his opening brief “Defendant instituted a smart check program at the request of Defendant’s cashier at the check-out stand which linked Plaintiff’s (Appellant’s) Safeway Club Card to Plaintiff’s checking account with Bank of America. Defendant engaged in the repeated unauthorized use of Petitioner’s Club Card incurring an accumulated debt of \$2,393 between July 2005 and the present” After Safeway demurred on the grounds that the complaint was uncertain, Mr. Vitale filed a first amended complaint omitting any allegations of fraud and basing his entire claim on the claimed negligence of Safeway. In doing so, he alleged that these acts or omissions occurred between August 1, 2005 and May 24, 2006. Safeway again demurred to appellant’s complaint on several grounds but specifically on the ground that the statute of limitations barred any negligence claim.

Mr. Vitale filed his law suit in February of 2010. The statute of limitations for a negligence claim in California is three years. (Code Civ. Proc., § 338.) Thus the latest Mr. Vitale could have filed his complaint was September 2009. The trial judge appropriately sustained the demurrer without leave to amend.

We perceive no error in the trial court's ruling. Because the court's ruling is entirely on an issue of law, we have no cause to proceed to consider the claims that Mr. Vitale makes against the trial judge nor need we take up any of his claims based on judicial Canon 3. We are aware of Mr. Vitale's claim of mental disability, however, he has made no claim to us for accommodation nor does the record show that he made any appeal to the trial court for accommodation.

DISPOSITION

The judgment is affirmed.

RUSHING, P.J.

WE CONCUR:

PREMO, J.

ELIA, J.